

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JACKIE DUTTON, Administrator
of the Estate of Thomas Dutton,
deceased,**

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 04-CV-0103-DRH

ORDER

HERNDON, District Judge:

Now before the Court is Plaintiff's amended motion to bar pathologist Dr. John Heidingsfelder's autopsy report and testimony opinion that Thomas Dutton died of Streptococcus Viridans and/or Clostridium Sepsis (Doc. 97). Dr. Heidingsfelder, the forensic pathologist that performed the autopsy on Thomas Dutton ("Dutton"), drew a blood sample from Dutton about 15 hours after his death.¹ Based on the post-mortem cultures, Dr. Heidingsfelder concluded that Dutton died as a result of bacterial sepsis of the species Streptococcus viridans and/or Clostridium. Plaintiff moves to bar Dr. Heidingsfelder's autopsy report and testimony opinion that Dutton died as a result of Streptococcus viridans and/or Clostridium because Defendant's expert Dr. Bernard Camins, an infectious disease

¹The laboratory culture of the post-mortem blood sample grew two types of organisms: Streptococcus viridans and/or Clostridium.

specialist, disagrees with Dr. Heidingsfelder's conclusion that Dutton died as result of Streptococcus viridans and/or Clostridium.² The Government opposes the motion arguing that Plaintiff's motion is frivolous.

The Court agrees with the Government. Based on Plaintiff's argument, no witness could ever testify as to an opinion if another witness disagreed with the first witness. Clearly, such a rule would thwart the very principles of our legal system. Accordingly, the Court **DENIES** Plaintiff's amended motion to bar pathologist Dr. John Heidingsfelder's autopsy report and testimony opinion that Thomas Dutton died of Streptococcus Viridans and/or Clostridium Sepsis (Doc. 97).

IT IS SO ORDERED.

Signed this 10th day of March, 2006.

/s/ David RHerndon
United States District Judge

²Dr. Camins testified as follows:

- Q. Would you agree that the most likely source for the streptococcus viridans [sic] that was cultured from Mr. Dutton's blood after his death was the dental abscess?
- A. No. Cultures that are obtained more than 15 hours or even 12 hours after death have shown by different studies to not really be consistent about 50 percent of the time, that it's consistent that's the cause pre-mortem, so the fact that they cultured this organism after death more than 12 hours later could mean that it just got cultured or contamination because it happened so long after the person's death.
- Q. So is it your opinion that most likely Mr. Dutton did not even have streptococcus virivans [sic] in his bloodstream?
- A. That is my opinion?
- Q. Is it also your opinion that most likely Mr. Dutton did not even have Clostridium in his bloodstream?
- A. Before he died, yes, I agree with that, yes.
(Doc. 97; Exhibit C, p. 44).